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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/964,268

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Dhaval N. Shah

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7590

07/20/2006

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EXAMINER

LEROUX, ETIENNE PIERRE

ART UNIT

PAPER NUMBER

2161

DATE MAILED: 07/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/964,268

Applicant(s)

SHAH ET AL.

Examiner

Etienne P LeRoux

Art Unit

2161

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 May 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 81-89 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 81-89 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                            | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____                                                |

*Claim Status:*

Claims 81-89 are pending; claims 1-80 have been canceled. Claims 81-89 are rejected as detailed below.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 81-89 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 81, 84 and 87 recite “determining if metric information is required by each criterion.” The specification does not include a clear and precise description which supports above claim limitation such that a skilled artisan would be convinced that the inventor had possession of the invention at the time of filing instant patent application.

Claims 82, 83, 85, 86, 88 and 89 are rejected for at least being dependent from a rejected base claim.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 81-89 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "if metric information is required" in claims 81, 84 and 87 is a relative term which renders the claim indefinite. The term "if metric information is required" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For purposes of this Office Action, above limitation will not be given patentable weight.

Claims 82, 83, 85, 86, 88 and 89 are rejected for at least being dependent from a rejected base claim.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 81-89 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat No 6,115,752 issued to Chauhan (hereafter Chauhan) in view of US Pat No 6,314,093 issued to Mann et al (hereafter Mann), as best examiner is able to ascertain.

Claims 81, 84 and 87:

Chauhan discloses:

configuring a distributed director with criteria for service selection [distributed director interpreted as ONS 404, Fig 4, col 6, lines 55-65]

Chauhan discloses the elements of the claimed invention as noted above but does not disclose assigning a weight to each criterion. Mann discloses assigning a weight to each criterion [col 1, lines 55-65]. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Chauhan to include assigning a weight to each criterion as taught by Mann for the purpose of selecting the best service available for the type of data required to be transmitted [col 1, lines 20-35]

The combination of Chauhan and Mann discloses assigning a priority to each criterion [Chauhan: best route and predetermined time col 7, lines 5-25, load on each server, user's location, col 2, lines 1-10, round-robin, col 2, lines 60-65]

The combination of Chauhan and Mann discloses determining if metric information is required by each criterion [Chauhan: col 7, lines 13-25]

The combination of Chauhan and Mann discloses requesting metric information for each minored service for each criterion if metric is required by the criterion [Chauhan: col 7, lines 50-65]

The combination of Chauhan and Mann discloses applying a selection algorithm based on the metric information, the priorities, and the information is required by the criterion; and weights of the criteria to select a mirrored service [Chauhan; col 7, lines 5-50, best route, round-robin, Mann col 1, lines 55-65, path cost, path utilization]

Claims 82, 85 and 88:

The combination of Chauhan and Mann discloses the elements of claim 81 as noted above and furthermore discloses wherein the criteria comprises members from the set consisting of a portion scheme, an administrative cost scheme, a random scheme, a round trip time scheme, an external metrics scheme, an internal metrics scheme, a server metrics scheme, a local preferences scheme, a community attributes scheme, and a BGP attribute scheme [Chauhan; col 7, lines 5-50, Mann col 1, lines 55-65].

Claims 83, 86 and 89:

The combination of Chauhan and Mann discloses the elements of claim 81 as noted above and furthermore discloses comparing the metric information of the criterion with the highest priority for each mirrored service; selecting the service with the fastest metric information with respect to the highest priority criterion [Chauhan; col 7, lines 5-15].

The combination of Chauhan and Mann discloses the elements of the claimed invention as noted above but does not disclose comparing the metric information of the criterion with the next highest priority for each mirrored service if the metric information of the highest priority criterion is equal for two or more mirrored services; and selecting the service with the fastest metric information with respect to the next highest priority criterion. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Chauhan and Mann to include the above claim language for the purpose of reducing latency by including another criterion such as load on a server [Chauhan, col 2, lines 1-10].

***Response to Arguments***

Applicant's arguments filed 5/1/2006 have been fully considered but they are now moot based on above new grounds of rejection necessitated by applicant's claim amendments.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

***Contact Information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Etienne P. LeRoux whose telephone number is (571) 272-4022. The examiner can normally be reached Monday – Friday, 8:00 am - 4:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on (571) 272-4146. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Etienne LeRoux

July 18, 2006



Primary Examiner